No. 92-1769

Supreme Court, U.S.
FILED
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

MICHAEL SALMINEN,

PETITIONER,

vs.

CONRAD M. FREDIN,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MINNESOTA

PETITION FOR A WRIT OF CERTIORARI

MICHAEL SALMINEN
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BEST AVAILABLE COPY

QUESTIONS PRESENTED FOR REVIEW

Does obstruction by Minnesota Judicial, Legislative and Executive officials, preventing attorney pro se Salminen's Petitions For Impeachment And Removal from being considered in Minnesota House of Representatives, deprive him of United States Constitutional rights under 1st, 5th or 14th Amendments at 42 USCS § 1983?

When trial court denies attorney pro se Salminen protection under attorney work product doctrine, has he been deprived his United States Constitutional rights under 1st, 5th or 14th Amendments at 42 USCS § 1983?

Is it class discrimination and deprivation of United States Constitutional rights at 42 USCS § 1983, when attorney pro se Salminen is denied oral argument in Minnesota Court of Appeals?

Did Minnesota Court of Appeals err

when it upheld lower court's summary judgment decision dismissing attorney pro se Salminen's counterclaim?

Is Minnesota Court of Appeals rule barring pro se litigant oral argument, on appeal, unconstitutional?

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Pro se Petitioner, Michael Salminen, respectfully prays that a Writ of Certiorari, or in the alternative, other appropriate writ issue to review the Minnesota Court of Appeals Order dated November 18, and filed November 24, 1992.

OPINIONS

Minnesota Court of Appeals Unpublished Opinion entered November 24, 1992. (A)

Minnesota Supreme Court Order entered January 22, 1993. (B)

JURISDICTION

The Minnesota Supreme Court Order entered January 22, 1993 exhausts State Court remedies. The jurisdiction of the United States Supreme Court is invoked at Part III, Rule 10.1 (b), Rules Of The Supreme Court. (see page 10)

CONSTITUTIONAL PROVISION INVOLVED

First Amendment:

Congress shall make no law . . . .

. . . or abridging the freedom of speech, . . . or to petition the government for redress of grievances.

Fifth Amendment:

No person shall . . . nor be deprived of life, liberty, or property without due process of law . . .

Fourteenth Amendment, Section 1:

All persons . . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, . . .

STATEMENT OF THE CASE

The instant matter directly originates from Minnesota District Court legal actions Merchants and Miners State Bank vs. Spal Enterprise, et al file #C84-0558, and In Re the Petition of Richard F. Spearman for Dissolution

of Spal Enterprise partnership, file #85-0064HC.

Plaintiff/Respondent, Conrad M. Fredin, is an attorney at law, a former Minnesota State Bar president. Defendant, Michael Salminen, retained Fredin to bring legal malpractice suit(s) upon attorneys who, with malicious intent, conspired in a fraudulent scheme, under color of state law in Minnesota Courts operating in judicial function, to repeatedly and unlawfully deprive Salminen of United States Constitutional guaranteed rights, causing his financial destruction.

Fredin refused to make discovery or commence legal malpractice suit(s) for his client, choosing instead to join the fraudulent scheme, protecting his fellow attorneys, and working to financially destroy Salminen. Without funds, Salminen became attorney pro se, counterclaiming

Fredin, alleging legal negligence, conspiracy, fraud and inadequate settlement. The trial court judge, knowing he had a conflict of interest, refused removal. eventually granting Fredin summary judgment, dismissing Salminen's counterclaim, even though issues to be decided by a jury remained unresolved.

Bear with me while I lay foundation. The three branches of Minnesota government have duties and responsibilites, in part, as follows:

Legislative - House of Representatives has judicial responsibility to determine if members of the executive and judicial branches should be impeached.

Judicial - District, Appellate and Supreme Court Judges have the responsibility to hear constitutionality cases and to interpret the law and Constitution.

Executive - Attorney General has the

responsibility to protect public rights.

The Federal issue was first raised in the trial court and then again in the Appellate Court when Salminen repeatedly stated in his papers that he would not give up his United States and Minnesota Constitutional rights, and that he removed all implied consent from Minnesota Courts.

REASONS FOR GRANTING WRIT

Unable to get a fair hearing in Minnesota District, Appellate and Supreme Courts, Salminen filed Petitions For Impeachment And Removal with the House of Representatives, in his attempt to remove the culprits who individually and collectively thwart and obstruct his ongoing quest for justice. Person(s) suppressed the Petitions in the House, so Salminen requested the Attorney General to intervene and prosecute whoever was interferring with the performance of

duty of House members to determine for or against impeachment. The Attorney General failed to protect Salminen's right to petition his government for redress of grievances, by refusing to prosecute. One of those Petitions For Impeachment And Removal is included as an integral part of Salminen's counterclaim against Fredin, in this matter. Obviously, all three branches of Minnesota government are colluding to willfully deprive Salminen of his United States Constitutional rights under 1st, 5th and 14th Amendments at 42 USCS § 1983.

The instant matter is only one of many directly related legal actions in which, over the last decade, Salminen has routinely and repeatedly been deprived of his Constitutional rights, under color of state law, in Minnesota Courts. A list of those legal actions is included as an integral part of

Salminen's counterclaim against Fredin.

Based upon arbitrary rule, not stattutory or constitutional law, the Minnesota Court of Appeals unconstitutionally denies attorney pro se Salminen oral argument on his appeal.

At all times in this matter, attorney pro se Salminen has been both attorney and client. He paid the same fees as a licensed attorney to participate in the Minnesota legal system. Therefore, he is protected under the attorney/client privilege and work product doctrine. He invoked the doctrine at least five times during the taking of his February 10, 1992 depostion. (pgs. 25,39,40,60 and 79, trans of 2/10/92 depo) He also stated he would disclose his facts he would present to the jury at a pre-trial conference. (pg. 64, trans of 2/10/92 depo) During the taking of that deposition, pro se Salminen treated his

writings, statements, or testimony which would substantially reflect or invade his legal impressions or legal theories as to the pending litigation, as attorney work product. His legal impressions and theories include his tactics, strategy, opinions and thoughts. (34 F.R.D. 212, 213) (Hickman v. Taylor 329 U.S. 495)

The trial court Judge erred when he granted Fredin summary judgment, dismissing Salminen's counterclaim for lack of litigation issue, based upon Salminen's deposition testimony, thereby prejudicially denying Salminen from presenting his legal negligence, conspiracy, fraud and inadequate settlement issues at a pre-trial conference. (3/23/92 trans of proceed) Under color of state law, the trial court Judge wrongfully and prejudicially deprived pro se Salminen of his protected attorney work product rights. Salminen considers that deprivation of

his United States Constitutional rights under 1st, 5th and 14th Amendments at 42 USCS § 1983.

This is a clear-cut case of attorney Fredin abandoning his client, then joining his fellow white collar judicial plundering officers of the court, to scheme with willful and malicious intent to financially destroy the client, and protect his fellow attorneys.

> "Private defendant acts under color of state law for purposes of 1983 when he is willful participant in joint action with state or its agents." (Malak v Assoc. Physicians, Inc. (1986 CA Ind.) 784 F 2d 277)

Review of all files, records and proceedings in the instant matter, and in actions referrenced in Salminen's counterclaim against Fredin, and in Petitions For Impeachment And Removal at the Minnesota House of Representatives, will confirm the truth of the foregoing allegations and statements.

Petitioner is a citizen of the United States and of the State of Minnesota.

In regard this matter, a Minnesota state court of last resort decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals. (Part III, Rule 10.1 (b), Rules of the Supreme Court.)

For special and important reasons presented herein, Petitioner respectfully requests allowance of Writ of Certiorari, or in the alternative, other appropriate writ to review the Minnesota Court of Appeals Unpublished Opinion entered November 24, 1992.

Dated this 14th day of April, 1993.

Respectfully submitted,

Michael A. Salminen

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STATE OF MINNESOTA)
)ss
COUNTY OF ST. LOUIS)

MICHAEL A. SALMINEN, first being sworn upon an oath, states this Petition for Writ of Certiorari is made in good faith, is not frivolous, and is not interposed for the purpose of delay; and that the facts stated in the foregoing petition, so far as they come within his own knowledge, are true, and so far as derived from the knowledge of others, he believes them to be true.

Michael A. Salminen
MICHAEL A. SALMINEN

Subscribed and sworn to
before me on this 14th
day of April, 1993.

Notary Public

[illegible] RICHHOLZ
[illegible] NOTARY PUBLIC-MINNESOTA
[illegible] COUNTY
MY COMMISSION EXPIRES JUNE 11, 1997

STATE OF MINNESOTA

IN COURT OF APPEALS

C3-92-1164

St. Louis County Klaphake, Judge
District Court file No. CO-91-300139

Conrad M. Fredin,

Respondent,

Gaylord W. Swelbar
Robin C. Merritt
Hanft, Fride, O'Brien, Harries, Swelbar & Burns, P.A.
1000 First Bank Pl.
Duluth, MN. 55802

vs.

Michael Salminen,

Appellant.

Pro Se
P.O. Box 353
Hibbing, MN. 55746

Filed Nov. 24, 1992
Office of Appellate Courts

Considered and decided by Klaphake, Presiding Judge, Davies, Judge, and Fleming, Judge.*

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Michael Salminen appeals from judgment and denial of post-trial motions in an action to recover unpaid

attorney fees, challenging numerous rulings. Respondent Conrad M. Fredin filed a notice of review of the trial court's order denying attorney fees. We affirm.

DECISION

I.

The court properly granted summary judgment on Salminen's counterclaim alleging ethical misconduct. A violation of the Rules of Professional Conduct does not give rise to a private action against an attorney. See L & H Airco, Inc. v. Rapistan Corp., 446 N.W. 2d 372, 380 (Minn. 1989). Moreover, during discovery Salminen refused to provide any facts in support of his legal malpractice allegations. On the day of trial Salminen refused to provide the facts to the trial court and then stated he was not prepared to provide the supporting facts despite having filed a

Certificate of Readiness. We conclude the lower court did not err in granting summary judgment where no action lies for ethical misconduct and where Salminen failed to establish a material fact question as to legal malpractice. See Minn. R. Civ. P. 56.03; Offerdahl v. University of Minn. Hosps. & Clinics, 426 N.W. 2d 425, 427 (Minn. 1988)

II.

Salminen contends that the trial judge should have recused himself for bias. We disagree. Salminen already removed the first judge assigned to the case. See Minn. R. Civ. P. 63.03. Moreover, Salminen provided no evidence that the substitute judge was prejudiced. See Minn. Stat. § 542.16, subd. 2 (1990); see also Durell v. Mayo Found., 429 N.W. 2d 704, 705 (Minn. App. 1988), pet. for rev. denied (Minn. Nov. 16, 1988) We conclude the trial court did not abuse

its discretion in denying Salminen's motion for removal. See Durell, 429 N.W. 2d at 705.

III.

In addition, Salminen challenges the trial court's denial of his motion to allow a claim for punitive damages. Salminen failed to present any factual basis showing that Fredin acted with deliberate disregard. Therefore, the trial court had no choice but to deny his motion to assert a punitive damages claim. See Minn. Stat. § 549.20, subd. 1(a) (1990); M.H. & J.L.H. v. Caritas Family Servs., 488 N.W. 2d 282, 290 (Minn. 1992)(to assert punitive damages claim plaintiff must establish prima facie evidence of deliberate disregard).

IV.

Salminen also contends the evidence does not support the trial court's findings of fact. The court heard testimony

from two witnesses regarding the legal work requested by Salminen, the number of hours billed, and the rate at which they were billed. Salminen was present during the testimony, but refused to participate in cross-examination. We conclude the testimony presented clearly supports the trial court's findings. See Minn. R. Civ. P. 52.01.

Moreover, in challenging the denial of his motion for new trial, Salminen has merely reiterated his dissatisfaction with the outcome of the trial, calling the procedure "unjust" and "fraudulent." Salminen's other assertions for a new trial are conclusory and are not specifically identified. See Amatuzio v. Amatuzio, 431 N.W. 2d 588, 589 (Minn. App. 1988)(motion for new trial must identify specific grounds), pet. for rev. denied (Minn. July 27, 1989). Thus the trial court did not abuse its discretion by

denying Salminen's motion for a new trial. See Jack Frost, Inc. v. Engineered Bldg. Components Co., 304 N.W. 2d 346, 352 (Minn. 1981).

V.

Fredin properly filed a notice of taxation of costs pursuant to Minn. R. Civ. P. 54.04. Salminen failed to attend either of the two scheduled hearings on the matter. The items taxed are authorized and the amounts reasonable. We therefore conclude the trial court did not abuse its discretion in its award of costs and disbursements. See Striebel v. Minnesota State High School League, 321 N.W. 2d 400, 403 (Minn. 1982) (key in determining whether an abuse of discretion has occurred is whether the costs are reasonable and necessary).

VI.

Fredin challenges the trial court's denial of attorney fees, claiming

Salminen should have been sanctioned for raising frivolous claims. The trial court awarded attorney fees with regard to Salminen's motion for a new trial, but refused to award fees for his other actions. The record supports the trial court's implicit finding of bad faith as to the motion for new trial. however, Fredin failed to establish bad faith or lack of an objectively reasonable basis as to Salminen's other motions. See Minn. Stat. § 549.21, subd. 2 (1990); Minn. R. Civ. P. 11; Uselman v. Uselman, 464 N.W. 2d 130, 140, 143 (Minn. 1990) Thus, we conclude the trial court did not abuse its discretion in limiting sanctions accordingly. See Uselman, 464 N.W. 2d at 141, 145.

Affirmed.

Signature not legible

*Retired judge of the district court, serving as judge of the Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 2.

STATE OF MINNESOTA

IN SUPREME COURT

C3-92-1164

Conrad M. Fredin,

Respondent,

vs.

Michael A. Salminen,

Appellant.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Michael A. Salminen for further review be, and the same is, denied.

Dated: January 21, 1993

BY THE COURT

A.M. Keith

Chief Justice

Appendix B